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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,668	05/09/2006	Ivan Sabesky	85150-202 RWD	2779
7590	01/23/2009		EXAMINER	
Ade & Company Inc 1795 Henderson Highway PO Box 28006 Winnipeg Manitoba, R2G 4E9 CANADA			BLIZZARD, CHRISTOPHER JAMES	
			ART UNIT	PAPER NUMBER
			4185	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/578,668	SABESKY ET AL.	
	Examiner	Art Unit	
	CHRISTOPHER BLIZZARD	4185	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 5/09/2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 09 May 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/09/2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input checked="" type="checkbox"/> Other: <u>DD 132848</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 6-8, 12-15, and 17** are rejected under 35 U.S.C. 102(b) as being anticipated by **McCarver (US 5,349,965)**.

Regarding claim 1, McCarver discloses a ventilation system comprising: an envelope including a hollow interior (14) and at least one breathable surface portion (10) allowing gas to pass from a surrounding area of the envelope to the hollow interior through said at least one breathable surface portion of the envelope; a suction port (18) coupled to the envelope (fig. 1) in communication with the hollow interior of the envelope; and suction means, in the form of a vacuum source, for communication with the suction port for drawing gas from the surrounding area and into the suction port (Abstract), through said at least one breathable surface portion of the envelope.

Regarding claim 6, McCarver discloses a system wherein said at least one breathable surface portion (10) is located only in an upper side of the envelope (fig. 3).

Regarding claim 7, McCarver discloses a system wherein the envelope includes an outer shell substantially impermeable to gas particles (column 4, lines 49-50), said at

least one breathable surface portion spanning an opening in the outer shell (column 3, lines 21-22).

Regarding claim 8, McCarver discloses a system wherein both the outer shell and said at least one breathable surface portion are formed of pliable material (column 4, lines 53-61).

Regarding claim 12, McCarver discloses a system wherein there is provided a support structure (16) supporting an upper side (10) of the envelope spaced above a lower side of the envelope (12) (fig.3).

Regarding claim 13, McCarver discloses a system wherein at least a portion of the upper side (10) of the envelope is flexible (column 4, lines 59-61).

Regarding claim 14, McCarver discloses a system wherein the support structure (16) comprises an internal support structure surrounded by the envelope which supports upper (10) and lower sides (12) of the envelope spaced from one another spanning between the suction port (18) and said at least one breathable surface portion (fig. 5).

Regarding claim 15, McCarver discloses a system wherein the envelope is fully flexible (column 4, lines 53-61).

Regarding claim 17, McCarver discloses a wherein the support structure (16) comprises stiff material integrally formed with the envelope (column 5, lines 19-20).

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 2-5, 9, 10, and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McCarver (US 5,349,965)** in view of **Nepon (US 5,513,632)**.

Regarding claim 2, McCarver discloses a system wherein the envelope includes a pair of the breathable surface portions (10) (fig. 5), but fails to disclose them at spaced positions from one another.

However, Nepon et al. discloses a ventilation system with a pair of breathable surface portions (20) (fig. 3) at spaced position from one another.

5. It would have been obvious to one of ordinary skill in the art to modify the invention of McCarver to include spacing as taught by Nepon et al. since doing so would allow suction to be present only where it is needed.

Regarding claim 3, McCarver discloses a system wherein each breathable surface portion (9A, 9B) is elongate in a respective longitudinal direction lying substantially parallel to the longitudinal direction of the other breathable surface portion (fig. 5).

Regarding claim 4, McCarver discloses a system wherein the breathable surface portions are raised in relation to a central portion spanning there between which is flexible (column 5, lines 53-66) (fig. 2).

Regarding claim 5, McCarver discloses a system wherein there is provided a support structure (16) supporting the breathable surface portions (10) raised above a bottom side of the envelope (12) (fig. 3).

Regarding claim 9, McCarver discloses a system wherein the envelope includes a pair of breathable surface portions (9A, 9B) (fig. 5), but fails to disclose the surfaces at spaced positions from one another, on opposing sides of a central portion, the central portion being suitably sized for supporting a head of a person thereon.

However, Nepon et al. discloses a system with a pair of breathable surface portions (20) at spaced positions from one another, on opposing sides of a central portion, the central portion being suitably sized for supporting a head of a person thereon (fig. 3).

6. It would have been obvious to one of ordinary skill in the art to modify the invention of McCarver to include the spacing and central portion as taught by Nepon et al. since doing so would allow the device to comfortably support a patient's head during a procedure.

Regarding claim 10, McCarver discloses a system wherein there is provided a support structure (16) supporting the central portion suspended above a bottom side (12) of the envelope (fig. 3).

Regarding claim 16, McCarver discloses a system wherein the internal support structure is generally U-shaped (fig. 2), but fails to disclose the structure to include a base portion and two side portions, one of said at least one breathable surface portions

being located at each of the side portions and the suction port being located at the base portion.

However, Nepon et al. discloses a system wherein the support structure is generally U-shaped (fig. 3) to include a base portion and two side portions, one of said at least one breathable surface portions (20) being located at each of the side portions and the suction port (44) being located at the base portion.

7. It would have been obvious to one of ordinary skill in the art to modify the invention of McCarver to include a structure as taught by Nepon et al. since it would be beneficial to procedures where placement of the breathable surfaces is important.

8. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over **McCarver (US 5,349,965)** in view of **Nepon (US 5,513,632)**, further in view of **Martz (US 1,696,775)**.

Regarding claim 11, McCarver and Nepon et al. fail to disclose a system wherein there is provided a selectively separable cover supported on an upper side of the envelope spanning between the breathable surface portion which are commonly located in the upper side of the envelope.

However, Martz discloses a system with a selectively separable cover for use with a dental chair.

9. It would have been obvious to one of ordinary skill in the art to further modify the device of McCarver to include a cover as taught by Martz since it would provide a sanitary surface for a patient's head to be placed.

10. **Claims 18-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McCarver (US 5,349,965)** in view of **Schöntube (DD 132848)**.

Regarding claim 18, McCarver fails to disclose a system wherein a bottom side and a pair of opposed upright side walls of the envelope are formed of stiff material.

However, Schöntube et al. disclose a ventilation system wherein the bottom side and a pair of opposed upright sides walls of the envelope are formed of stiff material, in the form of cast plastic resin (Abstract; page 4, lines 1-4) (fig. p. 6).

11. It would have been obvious to one of ordinary skill in the art to modify the invention of McCarver to include stiff side walls and bottom portions as taught by Schöntube et al. since doing so would make the entire device less susceptible to puncture.

Regarding claim 19, McCarver discloses a system wherein the upper portion (10) of the envelope is flexible (column 4, lines 58-61) and spans the upright side walls (22) (fig. 1).

Regarding claim 20, McCarver discloses a system wherein there is provided one of said at least one breathable surface portions (9A 9B) adjacent each of the upright side walls (22) (fig. 5).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Blizzard whose telephone number is (571)-

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270-7138. The examiner can normally be reached on Monday-Thursday 7:30 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell McKinnon can be reached on (571) 272-4797.

1/16/09
/C. B./
Examiner, Art Unit 4185

/Terrell L Mckinnon/
Supervisory Patent Examiner, Art Unit 4185